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November 8, 1993

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: **GN Docket No. 93-252**

Dear Mr. Caton:

Submitted herewith on behalf of Roamer One, Inc. is an original and nine (9) copies of its Comments with respect to the above docket.

Kindly contact this office directly with any questions or comments concerning this submission.

Respectfully submitted,

William J. Franklin
Attorney for Roamer One, Inc.

Encs.
cc: Mr. Nicholas Wilson
Mr. David Neibert,
Roamer One, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	**GN Docket No. 93-252**
	)	
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

COMMENTS OF ROAMER ONE, INC.

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SUMMARY OF COMMENTS

Roamer One, Inc. ("Roamer One") and its principals now hold authorizations for, or have contractual responsibility to construct and operate, over five-hundred (500) local 220 MHz systems in over 150 markets nationwide. Accordingly, Roamer One is uniquely qualified to comment on the Commission's proposed regulatory treatment of 220 MHz Local licensees.

I

The 220 MHz communications services have unique regulatory requirements which must be addressed in this proceeding. Unlike the 800 MHz and 900 MHz services, the 220 MHz services is an infant service, only now emerging from its regulatory incubation. Unlike the 800 MHz and 900 MHz services, the 220 MHz services face substantial technical limitations. The paired 220 MHz channels are likely to be unattractive for interconnected, two-way voice communications or for widespread public usage.

II

The definition of "interconnected service" should be based on the end user's perception of the offered service:

> Mobile service becomes "interconnected service" when the end user can perceive that the service used the PSTN as an integral part of its service offering.

This test readily separates those service offerings in which the PSTN usage is a happenstance, i.e., the licensee chose to use the PSTN (rather than a private microwave link or control transmitter) for the licensee's own purposes without any end user awareness of the PSTN usage.

The phrase "to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public" should require widespread public availability. As correctly proposed (NPRM, ¶25), narrowly targeted eligibility restrictions or service offerings are not "effectively available to a substantial portion of the public." Carriers should retain the flexibility to target a service offering to a specific market segment without incurring needless commercial mobile service obligations, which could needlessly serve as a barrier to new and innovative service offerings.

The phrase "functional equivalent of a commercial mobile service" should be read inclusively, i.e., to include either systems which are not commercial mobile systems or systems which are not the functional equivalent of commercial mobile systems, both as proposed in paragraphs 29-30 of the NPRM.

The Commission should classify Local 220 MHz licensees as commercial or private mobile service providers on a case-by-case basis, depending upon their primary specific use of the spectrum. PCS-like self-certification of this classification for 220 MHz Local licensees is appropriate. Such flexibility is essential for 220 MHz licensees to develop the highest and best use of their spectrum.

III

The NPRM misread the 1993 amendments of the Communications Act, by imposing immediate alien-ownership restrictions on all private radio licensees without regard to their character as

commercial or private mobile service providers. As to any private licensee other than those who "will be treated as ... common carrier[s]", Section 332(c)(6) imposes no limitations on foreign ownership at this time. This statutory scheme frees newly licensed private radio licensees (such as the 220 MHz Local licensees intending to provide private mobile services) to seek foreign investment capital risk during the pendency of this rulemaking.

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To: The Commission

COMMENTS OF ROAMER ONE, INC.

Roamer One, Inc. ("Roamer One"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, hereby files comments with respect to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1/] Roamer One's comments are focused on the Commission's regulatory treatment of 220 MHz licensees, and issues ancillary thereto. As to 220 MHz licensees, Roamer One urges the Commission to be sensitive to the specific technical, economic, and regulatory constraints of this developing service, and classify it as commercial mobile service on a case-by-case basis only to the limited extent that it directly competes with 800 MHz and 900 MHz SMR commercial mobile systems.

[1/] 8 FCC Rcd ____ (FCC 93-454, released October 8, 1993) ("NPRM").

DESCRIPTION OF ROAMER ONE

Roamer One is a communications construction and management firm which specializes in the funding, construction, management, and operation of 220 MHz systems. The principals of Roamer One now hold more than 240 authorizations for 220 MHz commercial, 5-channel systems in 95 markets nationwide. Pursuant to various management agreements, Roamer One also has the responsibility to construct, manage, and operate approximately 300 additional 220 MHz systems in about 60 markets under the ultimate direction and control of their respective licensees.

In support of these efforts, Roamer One now has contracts with Uniden, Inc. to purchase 220 MHz 5-channel base stations for these systems. Roamer One has also begun the installation of these systems, and within this month (i.e., November 1993) will begin operating (pursuant to a management agreement) its first system near Columbus, Ohio. This system will also be Uniden's first operating 220 MHz system.

With this extensive practical experience and knowledge of the 220 MHz SMR industry, Roamer One has a unique perspective from which to comment on the Commission's proposed regulatory treatment of 220 MHz licensees.

COMMENTS

I. BECAUSE OF THEIR AS-YET-UNDEVELOPED NATURE AND TECHNICAL LIMITATIONS, THE 220 MHz SERVICES NEED A SENSITIVE REGULATORY TREATMENT WHICH RECOGNIZES THEIR SPECIAL NATURE.

As a gross generality, many discussions lump the 220 MHz licensees in with existing 800 MHz and 900 MHz SMR licensees, as merely the same service operating at a different frequency band. Like many generalities, this classification is simplistic and ignores important differences between services in the bands. As we will see, the 220 MHz communications services have unique regulatory requirements which must be addressed in this proceeding.

Unlike the 800 MHz and 900 MHz services, the 220 MHz services is an infant service, only now emerging from its regulatory incubation.[2/] At present the Commission has a freeze on additional 220 MHz applications, thus preventing the relocation or expansion of authorized 220 MHz systems or the development of additional systems in unlicensed areas.

For these reasons, at most only a handful of 220 MHz licensees are now operational. No community of demand for 220 MHz radio services is commonly recognized. Indeed, in the Competitive Bidding Notice of Proposed Rulemaking, the Commission

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[2/] The Commission held its lottery for 5-channel 220 MHz Commercial Nationwide systems on March 31, 1993, but has not yet issued licenses to the lottery winners. The Commission held its lottery for 5-channel 220 MHz Local systems on October 19, 1992, and is now issuing those licenses. The Commission has not yet designated tentative selectees or issued licenses for the 10-channel 220 MHz Nationwide Commercial systems or for the 220 MHz Noncommercial Nationwide systems.

recognized "the uncertainty with respect to how 220 MHz Local licensees will actually conduct their businesses...."[3/]

Unlike the 800 MHz and 900 MHz services, the 220 MHz services face substantial technical limitations. The 220 MHz allocation is extremely narrow-band (5 KHz channelization), as compared with 25 KHz channels at 800 MHz and 12.5 KHz channels at 900 MHz. This narrow 220 MHz channelization renders its equipment difficult to develop and expensive to manufacture. Both base-station and user equipment to operate at 220 MHz is only now being type-accepted, and that equipment is not in wide-spread distribution or achieving economies of scale in its manufacture.

Although all three bands are licensed with paired channels, at present the spacing between the paired 220 MHz channels forces voice operations to operate on the CB-style, simplex "push-to-talk" mode of operation. Thus, in the foreseeable future 220 MHz systems are likely to be unattractive for interconnected, two-way voice communications, and not viable competitors for 800 MHz or 900 MHz SMR mobile-telephone services, 800 MHz ESMR services, cellular, or anticipated PCS services.

These differences (which substantially result from the Commission's 220 MHz regulations) render 220 MHz authorizations substantially different from the existing 800 MHz and 900 MHz authorizations. Accordingly, in this proceeding the Commission must recognize those differences in carefully crafting a regula-

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[3/] Competitive Bidding, 8 FCC Rcd ____ (FCC 93-455, released October 12, 1993) (¶133 n.123) (Notice of Proposed Rule Making).

tory treatment appropriate for the specific nature of the 220 MHz radio services.

II. THE COMMISSION SHOULD CLASSIFY 220 MHz SYSTEMS AS "COMMERCIAL MOBILE SERVICE" PROVIDERS ON A CASE-BY-CASE BASIS AND ONLY TO THE EXTENT THAT SUCH SYSTEMS ARE THE DIRECT COMPETITORS OF COMMERCIAL MOBILE SERVICE PROVIDERS IN OTHER FREQUENCY BANDS.

Because of the specific circumstances of the 220 MHz authorizations (as discussed above), Roamer One believes that the Commission's regulatory treatment of 220 MHz licensees should be guided by one fundamental principle: The Commission should classify 220 MHz systems as commercial mobile service providers on a case-by-case basis and only to the extent that such systems are the direct competitors of 800 MHz and 900 MHz systems similarly classified as commercial mobile service providers. In all other cases, 220 MHz systems should be classified as private mobile service providers.

With that principle clearly articulated, Roamer One will respond to relevant inquiries in the NPRM.

A. "Interconnected Service" Should Be Measured By The End User's Reliance On The "Public Switched Network", and Not The Happenstance of The Licensee's Implementation of Its System.

Paragraphs 14-21 of the NPRM request comment on the proper definition of "interconnected service", as that term is used in Section 332(d) of the Communications Act. For these purposes, the NPRM requests comments on four specific questions:

- Does "interconnected service" require that the interconnection with the PSTN "be offered at the end user level, i.e., the service must provide subscribers to mobile radio service

with the ability to directly control the public switched telephone network...?"[4/]

- Does "interconnected service" occur when a carrier interconnects with a commercial mobile service provider, even though the carrier in question is not interconnected with the PSTN?[5/]

- Does "interconnected service" depend upon the occurrence of real-time access to the PSTN, i.e., does the end user access the PSTN directly, or is the PSTN access under the control of a "store-and-forward" terminal?[6/]

- Does "interconnected service" occur when the licensee uses the PSTN "strictly for own internal control purposes, such as 'dial up' services for transmitter control...?"[7/]

Roamer One respectfully suggests that one underlying principle suggested in Paragraph 33 of the NPRM answers all four questions.

In Paragraph 33, the Commission proposed to determine whether ostensibly private mobile services are the "functional equivalent of commercial mobile services" by examining:

> [B]oth the nature of the service and customer perception of the functional equivalency of those services. Customer perception is the linchpin of this test.[8/]

This principle should similarly be applied to determine whether a mobile service is interconnected:

[4/] NPRM, ¶15. In this connection, Roamer One supports the Commission's interpretation that "public switched network" as used in Section 332(d) is synonymous with "public switched telephone network" ("PSTN") as the Commission commonly used that term. See id., ¶22.

[5/] Id., ¶19.

[6/] Id., ¶¶20-21.

[7/] Id., ¶20.

[8/] Id., ¶33 (emphasis added).

> Mobile service becomes "interconnected service" when the end user can perceive that the service used the PSTN as an integral part of its service offering.

This test readily separates those service offerings in which the PSTN usage is a happenstance, i.e., the licensee chose to use the PSTN (rather than a private microwave link or control transmitter) for the licensee's own purposes without any end user awareness of the PSTN usage.[9/]

This test readily answers each of the four questions posed by the Commission (as identified above):

Does end-user access to the PSTN result in "interconnected service?"	Yes, the user is aware of this access.
Does the carrier's connection to a commercial mobile service provider result in "interconnected service?"	Answer varies with the purposes for which the interconnection is made; yes, if interconnection is an integral part of the end-user service offering; no, if the interconnection serves the licensee's own purposes.
Is real-time access to the PSTN required for "interconnected service?"	No. "Interconnected service" occurs if the end user is aware that it has accessed the PSTN, e.g., by dialing from the PSTN into a "store-and-forward" terminal.
Does interconnection for the licensee's own purposes result in "interconnected services?"	No. By definition, the end user is unaware that PSTN interconnection has occurred.

[9/] If this test is not adopted, the Commission reach the irrational result in which one private-radio licensee who used the PSTN for a dial-up transmitter control would become a commercial mobile service provider, while another private radio licensee providing the same service would remain a private mobile service provider because it used a control link for its transmitters.

Thus, the NPRM's "customer perception" test is appropriate and readily applicable to the determination of "interconnected services."

Under this standard, if an end user could not knowingly invoke or access the PSTN by using a mobile service, the service would not be an "interconnected service."[10/] For example, traditional dispatch service, alarm monitoring, process control, and vehicle status monitoring services would not be interconnected,[11/] but mobile-telephone SMR and PSTN-activated paging services would be.

B. "Service ... Effective Available to A Substantial Portion of the Public" Should Require A Widespread Public Availability.

Paragraphs 23-27 of the NPRM request comment on the proper definition of the phrase "to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public" as that phrase is used in Section 332(d) of the Communications Act. The Commission correctly stated

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[10/] Thus, the mere fact than an end user's invocation of mobile service (for example, by using an expired account number or triggering an alarm condition) which resulting in exception messages being transmitted over the PSTN would not result in the service becoming "interconnected" for the purposes of Section 332(d).

[11/] In Paragraph 38 of the NPRM, the Commission poses the query regarding the classification of "a wireless service that is entirely separate from the public switched network." Roamer One regards interconnection (as defined herein) as the sina qua non of commercial mobile service under the statutory scheme. Although Congress could have drafted Section 332 differently (and some might feel that a different result would be preferable), non-interconnected service is inherently private mobile service under the statute.

(NPRM, ¶24) that the existence of nominal eligibility restrictions (such as now exist for traditional SMR or PCP service) does not exempt a service from falling within this definition.

Further, Roamer One agrees with the Commission (NPRM, ¶25) that narrowly targeted eligibility restrictions or service offerings are not "effectively available to a substantial portion of the public." Carriers should retain the flexibility to target a service offering to a specific market segment without incurring needless commercial mobile service obligations.[12/] If this were not the case, the commercial mobile service obligations could well serve as a barrier to new and innovative service offerings. This is especially true in the 220 MHz band, in which the targeted end-user group or optimal service offerings have not been clearly identified.

Finally, the Commission proposed to define service offerings not in terms of capacity, but in terms of service area.[13/] In

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[12/] This limitation of potential subscribers should not measured only by licensee or end-user eligibility restrictions. Much like the Commission's proposed self-certification procedures for PCS service providers (NPRM, ¶¶46-47 & nn.67-68), each private-radio licensee should be free to limit its service offerings to targeted end-user groups. With such a limitation (perhaps implemented as a license condition), the licensee would be deemed a "private mobile service" provider. The Commission's enforcement mechanisms (including finders' preference procedures) police alleged violations of these limitations.

[13/] The fact that common-carrier services do not have geographic limitations is irrelevant. Roamer One understands the fundamental purpose of this proceeding are to reclassify certain existing private radio services (licensed under Part 90) as commercial mobile service and to classify new services such as PCS as either commercial or private. Services licensed as common carriers under Part 22 have self-selected themselves as commer-

(continued...)

particular, the Commission incorrectly noted (¶27 n. 34) that a paging service available to customers at a shopping mall would be "publicly available" because the public at the mall could use it. As is true with Tysons Corner, Montgomery Mall, Potomac Mills, etc., virtually all shopping malls are private property with a legal right to exclude whomever they desire. Thus, the Commission's example is factually incorrect.

More importantly, this principle, if carried to the extreme, would mean that a paging system for a single private residence or office could be deemed "available to the public" since it was available to those members of the public who reside in that residence or work in that office. The absurdity of that result illustrates the principle: A significant geographic limitation on private-radio service renders the service unavailable to a substantial portion of the public.

C. "Private Mobile Service" Should Have An Inclusive Definition With Respect to Services Licensed Under Part 90 of the Commission's Rules.

Paragraphs 28-33 of the NPRM request comment on the proper definition of the phrase "functional equivalent of a commercial mobile service" as that phrase is used in Section 332(d) of the Communications Act. This phrase is significant because Section 332(d)(3) defines "private mobile service" as "any mobile service

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[13]/(...continued)
cial mobile services, and the Part 22 regulatory structure therefore is largely irrelevant to the classification of Part 90 licensees.

... that is not commercial mobile service or the functional equivalent of commercial mobile service...."

In particular, the Commission requested comments on whether to "or" clause in this definition should be read inclusively or exclusively. The difference between those interpretations is shown in the following chart, where the shaded boxes represent areas of agreement between the two interpretations:

ALTERNATIVE CLASSIFICATIONS OF PART 90 MOBILE SERVICES		Functional Equivalent of Commercial Mobile Service	
		YES	NO
Commercial Mobile Service	YES	**Always Commercial Mobile Service**	Private if inclusive definition (NPRM, ¶¶29-30); Commercial if exclusive definition (NPRM, ¶31)
	NO	Private if inclusive definition (NPRM, ¶¶29-30); Commercial if exclusive definition (NPRM, ¶31)	**Always Private Mobile Service**

Roamer One supports the inclusive definition of "private mobile services", as the Commission explained it in paragraphs 29-30 of the NPRM.

At the time when Congress was wrestling with the common-carrier/private-carrier distinction, its attention was focused on the rise of Fleet Call-like wide-area SMR and ESMR systems and of wide-area PCP systems. Both types of ostensibly private systems are generally recognized (by both the industry and by potential subscribers) as the functional equivalent of common carrier

cellular and paging systems. Congress' addition of the phrase "functional equivalent of commercial mobile systems" appears to be its recognition of that well-recognized common-carrier/ private-carrier competition.

As noted in the NPRM (¶28 & n.37), the Conference Report stated that an interconnected service offered to the public is not "functionally equivalent" to commercial mobile service if it does not employ frequency reuse (or similar means of augmenting channel capacity) and does not provide service throughout a "wide geographic area." Those technical attributes are found in wide-area SMR, ESMR, and PCP systems.

For these reasons, the Commission should interpret the definition of "private mobile service" to include either systems which are not commercial mobile systems or systems which are not the functional equivalent of commercial mobile systems, both as proposed in paragraphs 29-30 of the NPRM.

D. Local 220 MHz Licensees Should Be Classified As "Commercial Mobile Service" Providers or "Private Mobile Service" Providers On A Case-By-Case Basis.

Paragraphs 35-40 of the NPRM request comment on the proper classification of existing private radio services as either commercial mobile service or private mobile service. With respect to Local 220 MHz licensees, the Commission should classi-

fy licensees on a case-by-case basis, depending upon their primary specific use of the spectrum.[14/]

The Commission has correctly proposed (NPRM, ¶40) to allow licensees on existing private land mobile frequencies the flexibility to provide either commercial or private mobile service. For the 220 MHz Local channels, such flexibility is essential for 220 MHz licensees to develop the highest and best use of their spectrum.[15/]

Roamer views the Commission's concern that it might end up licensing both commercial and private mobile service providers for the same set of frequencies (hereinafter "overlapping licensing") as irrelevant to its choice of service classifications. Overlapping licensing is likely to occur in any event as some private radio licenses will be used for the licensee's internal uses (thus remaining private, see NPRM, ¶35 & n.45) while other licenses for the same frequency or type of frequency could be used for commercial mobile service.

Indeed, overlapping licensing should regarded as a positive attribute. The existence of overlapping licensing demonstrates that the marketplace -- rather than the rigid demands of government regulation -- is determining how the spectrum is being used.

Further, in connection with its proposed PCS rules, the

[14/] Roamer One takes no position as to other specific services, such as Nationwide 220 MHz systems or 800 MHz/900 MHz SMR systems.

[15/] See Competitive Bidding NPRM, supra, ¶133 n.123 (220 MHz Local licensees face uncertainty with respect to their use of the spectrum).

Commission suggested (NPRM, ¶¶46-48 & nn.67-70) that PCS licensees be permitted to self-certify their proposed service offerings as either commercial or private mobile service, in all cases subject to Commission review and approval at the licensing stage. Roamer One supports this concept, and suggests that it be extended to the 220 MHz Local licensees.

As could be true with most 220 MHz Local licensees, Roamer One intends to focus its 220 MHz service offerings narrowly on those fleet operators and other businesses having a substantial need for real-time communications with, and information from, their vehicle fleets, e.g., delivery services, taxicab operators, trucking companies, etc. The vast majority of this service is intended to be two-way dispatch combined with data transmission such as automatic vehicle location or remote monitoring/switching of mobile status devices.

With the narrow 220 MHz bandwidth, 220 MHz communications services must be specialized and targeted to a specific type of business customer, and not to the general public looking for a "cellular like" mobile telephone service. Thus, the Commission should correctly classify all 220 MHz Local licensees (or at least those not primarily offering interconnected service) as private mobile service providers.

For these reasons, case-by-case classification of the usage of 220 MHz Local licensees as to commercial or private mobile service is in the public interest.

III. SECTION 332(c)(6) OF THE COMMUNICATIONS ACT DOES NOT IMPOSE ALIEN OWNERSHIP RESTRICTIONS ON PRIVATE RADIO LICENSEES WHO ARE UNLIKELY TO BE CLASSIFIED AS "COMMERCIAL MOBILE SERVICE" PROVIDERS PRIOR TO THE COMPLETION OF THIS RULEMAKING.

Roamer One opposes the NPRM's misreading of the 1993 amendments of the Communications Act to the extent that it imposes immediate alien-ownership restrictions on all private radio licensees. Specifically, the Commission wrote:

> [A]ll reclassifiable private licensees are immediately subject to the foreign ownership restrictions imposed on common carriers by Section 310(b) of the Communications Act. The statute allows affected licensees to maintain the level of foreign ownership that existed on May 24, 1993....[16/]

This text from the NPRM dramatically extends the restrictions on foreign ownership in Section 332(c)(6) of the amended Communications Act:

> The Commission ... may waive the application of Section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile radio service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993....

(Emphasis added.) Thus, the NPRM changes the phrase "will be treated as a common carrier" in Section 322(c)(6) to "may be treated as a common carrier", a significant change lacking any statutory basis.

As to any private licensee other than those (Fleet Call-type SMR/ESMR providers, wide-area PCP licensees, etc.) who likely "will be treated as ... common carrier[s]", Section 332(c)(6)

[16/] NPRM, ¶76 (emphasis added). The Commission further proposed procedures to permit such existing foreign ownership to remain in place pending the completion of this rulemaking and thereafter as permitted by the statute. Id., ¶¶77-78.

imposes no limitations on foreign ownership at this time. This statutory scheme frees newly licensed private radio licensees (such as the 220 MHz Local licensees intending to provide private mobile services) to seek foreign investment capital risk during the pendency of this rulemaking.[17/]

In Roamer One's experience, the substantial regulatory burdens of the 220 MHz licensees make reliance on foreign financing of 220 MHz private radio systems an attractive alternative. The Commission should not arbitrarily foreclose that potential source of financing by arbitrarily extending the Section 310(b) prohibitions on alien investment to legitimate private mobile service providers.

CONCLUSION

Accordingly, Roamer One, Inc. respectfully requests the Commission to limit its proposed classification of 220 MHz systems as commercial mobile service providers on a case-by-case basis and only to the extent that such systems are the direct competitors of 800 MHz and 900 MHz systems similarly classified

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[17/] Roamer One would support, however, a notification procedure similar to that outlined in paragraphs 77-78 of the NPRM, by which permitted foreign investment in private radio licensees would be reported to the Commission. Obviously, such new or incremental foreign investment would be without prejudice to Commission action in this proceeding. In fairness, if a likely private mobile service provider with new or incremental foreign investment were ultimately classified as a commercial mobile service provider, the Commission then should provide a penalty-free transition period in which the foreign ownership could obtain either Commission approval or private liquidation.

as commercial mobile service providers. In all other cases, 220 MHz systems should be classified as private mobile service providers. Additionally, the Commission should permit likely private mobile service providers to obtain foreign investment funds during the pendency of this rulemaking.

Respectfully Submitted,

ROAMER ONE, INC.

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Its Attorney

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